FILED

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No. ___

IN THE

Supreme Court of the United States

RUSSELL E. CRUMP,

Petitioner,

v.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK),

and

MANULIFE, The Manufacturers Life Insurance Company,

Respondents,

On Petition for a Writ of Certiorari to the United States Court Of Appeals For the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

RUSSELL E. CRUMP
Petitioner Pro se
3338 Croffut Place, SE
Washington, DC 20019-2437
(202) 584-0286

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

52 11

QUESTIONS PRESENTED FOR REVIEW

What is the standard or scope of review of an order granting a motion for summary judgment under rule 56 of the Federal Rules of Civil Procedure?

OR

Whether or not the statutes of limitations (D.C. Code Ann. Section 12-301(7)) are applicable to viable or subsisting contracts (The Annuity Contract & Settlement Agreement)?

OR

Whether or not summary judgment is an appropriate remedy for harmonizing separate, independent, inconsistent, valid contracts consummated for the benefit of plaintiff-petitioner?

OR

Whether or not trial by jury is an appropriate remedy for harmonizing separate, independent, inconsistent valid contracts consummated for the benefit of plaintiff-petitioner?

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RUSSELL E. CRUMP,

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NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK),

and

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Respondents,

On Petition for a Writ of Certiorari to the
United States Court Of Appeals
For the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

Russell E. Crump, the petitioner, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered 15 July 2003.

OPINIONS BELOW

The opinion of the United States Court of Appeals whose judgment is here sought to be reviewed, is unpublished and is printed in Appendix A, pages 1a and 2a.

The memorandum opinion of the trial court is printed in Appendix A, page 3a.

JURISDICTION

The judgment of the Court of Appeals was entered 15 July 2003.

A timely petition for rehearing en banc was denied 03 October 2003, and a copy of the order denying rehearing en banc appears at Appendix A, Page 2a.

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. sec. 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Amendment VII (1791) U.S.A. Constitution:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried to jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

- 28 U.S.C.A. § 2201

- D.C. Code Annotated, § 12-301 (7) Limitation of time for bringing actions.

> "Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:
>
> * * *
>
> (7) on a simple contract, express or implied-3 years . . ."

- Rules 11, 38, 52 (a), 56 (g), 57, 60 (b) (6) Frcp

- Rule 901 (b), (7—8) FRE

STATEMENT OF THE CASE

a. Background

This is a human story. Plaintiff-petitioner in 1979 filed a lawsuit (class action)[1] against National Railroad Passenger Corporation (Amtrak) his then employer, alleging racial discrimination in violation of 42 U. S.C. § 2000(e), et seq.; and 42 U.S.C. § 1981. On 28 September 1981, the litigation was settled pursuant to terms of the Settlement Agreement and Release (Agreement), which released Amtrak from all liability provided Amtrak paid Plaintiff-petitioner (Mr. Crump) $400. Monthly for twenty (20) years or life, whichever is longer. Paragraph 6 of the "Agreement." (*See Appendix C*).

The gravamen of this controversy: the failure of Amtrak and Manulife's exercise of due diligence in consummating the annuity contract, which is not part of "Agreement." Plaintiff-petitioner's exhibit 4, paragraph 2, lines 2 through 11, *(see Appendix C)* read in part:

> " . . . in the event your application for disability retirement was denied, Amtrak would cause to be paid to you the amount of $600 a month for 20 years. Payment of that amount was provided through the subject Annuity Policy. However, there is ***nothing (emphasis added)*** in the Settlement Agreement requiring such an annuity, and ***nothing (emphasis added)*** regarding beneficiaries or surviving family members. The annuity is simply the vehicle through which Amtrak provides the required monthly payments to you. You were not a party to the annuity contract, and therefore did not sign it."

---

[1] *Russell Crump, et al, v. National Railroad Passenger Corporation* (AMTRAK) DC DC Civil Action 79-1506

The record shows defendant-respondents liability to be as follows:

Amtrak	$96,000
	And, $600 Or $400 monthly for life. *(See Plt's Ex. 1 Paragraph 6) (Appendix C)*
Manulife	$2,400 with interest. *(Appendix C)*
	Costs and attorney's fees apply equally to both defendant-respondents, 42 U.S.C. § 1988.

b. The Facts

Circa 31 January 2002, Plaintiff-petitioner filed a verified complaint (Jury Trial) for declaratory judgment pursuant to 28 U.S.C.A. § 2201, and Rule 57 Frcp. Seeking a declaration of rights, duties, status, and liabilities under separate, independent, inconsistent, *valid* contracts, to name:

- Settlement Agreement and Release ("Agreement") made between Plaintiff-petitioner Crump and defendant-respondent Amtrak, providing for benefit payment for twenty years or life, whichever is longer;
- Annuity contract (not part of "Agreement") made 14 April 82 between Manulife and Amtrak, providing payment for the benefit of petitioner Crump for twenty (20) years (donee beneficiary);
- The annuity provides $600 monthly payment for twenty (20) years (a gift): whereas the Settlement Agreement and Release ("Agreement") provides for payment of benefits of $400 monthly, for twenty (20) years or life, whichever is longer.

c. Proceedings.

06/18/2002 16—MOTION for Summary Judgment *(Interlocutory in Character Liability Only)* by pro se Russell E. Crump.

07/02/2002 17—CROSS MOTION for Summary Judgment *and opposition to Plaintiff's Motion for Partial Summary Judgment* by NATIONAL RAILROAD PASSENGER CORPORATION.

07/15/2002 18—MOTION for Summary Judgment by MANULIFE.

02/12/2003 30—MEMORANDUM OPINION granting defendant's motion for summary judgment and denying plaintiff's cross-motion[2] for partial summary judgment.

02/12/2003 31—JUDGMENT in favor of defendants, National Railroad Passenger Corporation and Manulife Financial.

02/21/2003 32—MOTION to Alter or Amend or Vacate Judgment entered on 02/11/2003 by Russell E. Crump

Plaintiff-petitioner, appeals from the foregoing rulings, which was denied by the U.S. Court of Appeals.

REASONS FOR GRANTING THE WRIT

The judgment (orders) of the United States Court of Appeals for the District of Columbia Circuit should be reviewed by this court, to name:

- **Fraud:** Defendant-respondent's exhibit 2, paragraph 3 (declaration of Christine Turnblacer) made in bad faith. Rules 11, 56 (g) & 60 (b)(6) Frcp. *Hazel-Atlas Glass Co. v. Hartford Empire Co.* 322 US. 238 (1944). *See also* Rule 901 (b) (7 & 8) FRE.

- **Conflicts between circuit courts:** The United States Court of Appeals for the District of Columbia did not exercise de novo review of the order granting Summary Judgment. *See Riley v. Brown & Root*, 896 F.2d 474, at 476 (10 Cir. 1990). ("[W]e do not examine the trial

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[2] Plaintiff-Petitioner never filed a cross-motion.

court's rulings under the 'clearly erroneous' standard despite the fact that the trial court conducted a rather extensive evidentiary hearing . . . we review the entire record de novo.")

- **Denied Trial by Jury. Rule 38 Frcp.**
- **Failure to consider and apply established guidelines:**

  (a) Summary Judgment—Adjective Law. *Celotex Corp. v. Catrett* 477 U.S. 317, 106 S.Ct. 2548, 691 L Ed 2d 265 (1986).

  (b) Third party contract (donee beneficiary)—*Aetna Life Insurance Co. v. Maxwell*, 89 F 2d 988, at 991-995, note 7, (1937);

  (c) Statutory fee cases—*Hemsley v. Eckhart* 461 U.S. 424 (1983);

- **Failure to Cross-Appeal:**

  United States v. American Railway Express 265 U.S. 425, at 431, notes 3 & 4 (1924). Annotation: 1 L Ed 2d, 1820.

CONCLUSION

Petitioner, as a donee beneficiary to a third party annuity contract may sue respondents, jointly or severally. *See Contracts*, Sec. 277, 12 Am. Jur. at pages 825-826.

> **American Majority Rule**—It is stated in general terms and leaving out of consideration the limitations recognized in various jurisdictions, the rule in a great majority of American jurisdictions is that a third person (plaintiff-petitioner) may enforce a promise made for his benefit even though he is a stranger both to the contract and to the consideration. In other words, it is not necessary that any consideration move from the third party (plaintiff-petitioner); it is enough if there is a sufficient consideration between the parties who make

the agreement for the benefit of the third party (plaintiff-petitioner).

The rule followed in most jurisdictions, is that the parties (Amtrak and Manulife) to a contract, entered into for the benefit of a third party (plaintiff- petitioner), may rescind, vary, or abrogate the contract as they see fit, without the assent of the third party (plaintiff-petitioner), at any time before the contract is accepted, adopted, or acted upon by the third party (plaintiff-petitioner), and such rescission deprives the third party (plaintiff-petitioner) of any rights, under or because of such contract. This rule has been applied, for instance, in the case of an agreement to pay another's debts. Moreover, the statutes of some jurisdictions provide in effect that a contract may be revoked before the beneficiary accepts it.

See Williston on Contracts, Section 357. See also Aetna Life Ins. Co. v. Maxwell 89 F 2d 988 at 991-5, note 7.

The statute of limitation is applicable only to Amtrak and Manulife. See plaintiff-petitioner exhibits 3 & 4, Appendix C.

Respectfully submitted,

RUSSELL E. CRUMP
Petitioner Pro se
3338 Croffut Place, SE
Washington, DC 20019-2437
(202) 584-0286

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Filed 15 July 2003]

No. 03-7028
02cv00175

RUSSELL E. CRUMP,

Appellant

v.

NATIONAL RAILROAD PASSENGER CORPORATION, (AMTRAK) AND MANULIFE, THE MANUFACTURES LIFE INSURANCE COMPANY,

Appellees

BEFORE: Ginsburg, Chief Judge, and Tatel and Roberts, Circuit Judges

ORDER

Upon consideration of the motion for summary reversal, the opposition thereto, and the reply, it is

ORDERED that the motion for summary reversal be denied and that the district court's judgment entered February 12, 2003, be summarily affirmed. Appellant's complaint was filed beyond the applicable three-year statute of limitations. *See* D.C. Code Ann. Sec. 12-301 (7). Appellant's filing of a motion for summary reversal placed the merits of this appeal before the court. Because the appropriate disposition is so clear, summary action is warranted.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P.41 (b); D.C. Cir. Rule 41.

Per Curiam

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Filed 03 October 2003]

No. 03-7028
02cv00175

RUSSELL E. CRUMP,

Appellant

v.

NATIONAL RAILROAD PASSENGER CORPORATION, (AMTRAK) AND MANULIFE, THE MANUFACTURES LIFE INSURANCE COMPANY,

Appellees

BEFORE: Ginsburg, Chief Judge, and Edwards,* Sentelle, Henderson, Randolph, Rogers, Tatel, Garland, and Roberts, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Michael C. McGrail
Deputy Clerk

---

* Circuit Judge Edwards did not participate in this matter.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 02-00175 (HHK)

RUSSELL E. CRUMP,

Plaintiff

v.

NATIONAL RAILROAD PASSENGER CORPORATION, et al.,

Defendants

MEMORANDUM OPINION

Plaintiff Russell E. Crump, proceeding *pro se*[1] brings this breach of contract action against defendants, National Railroad Passenger Corporation (Amtrak) and Manulife Financial. Crump claims that he entered into a Settlement Agreement with Amtrak and that, under the Agreement's terms; he is entitled to lifetime benefits of $600 per month.[2] *See* Comp. Para. 1.

Amtrak disagrees and claims that the Agreement only entitled Crump to benefits for twenty years. Before this court is defendant's motion for summary judgment and crump's cross-motion for partial summary judgment. Upon consideration of these motions, the oppositions thereto, and the record of this case, the court concludes that Crump's

---

[1] Crump was represented by counsel for a period of time during the pendency of this litigation. Crump's counsel filed an amended motion to withdraw on July 17, 2002, and this motion was granted on July 23, 2002. Since that time, Crump has proceeded *pro se*.

[2] This court has jurisdiction over this action pursuant to 28 U.S.C. Sec. 1332.

motion must be denied, and defendants' motion must be granted

1. FACTUAL BACKGROUND

In 1979, Russell E. Crump, filed a lawsuit against Amtrak, his then employer, alleging racial discrimination, in violation of 42 U.S.C. Sec, 2000e *et seq* and 42 U.S.C. Sec. 1981. On September 28, 1981, the suit was settled. The suit was settled pursuant to the terms of a Settlement Agreement and Release ("Agreement"), which released Amtrak from all liability. At the center of this controversy is the Agreement's Paragraph 6. This provision provides:

> [Clause 1] [1]f Plaintiff applies for and is granted disability retirement by the Railroad Retirement Board, Amtrak shall cause to be paid to Plaintiff . . . . the Amount of $400 per month, for twenty (20) years or life, whichever is longer, Commencing the month following retirement in compensation for claims of pain, suffering and emotional distress.
>
> [Clause 2] In the event that Plaintiff's application for disability retirement is is denied. Amtrak shall cause to be paid to Plaintiff the amount of $600 a month for twenty (20) years commencing seven (7) months[3] after execution of this Agreement in compensation for claims of suffering, and emotional distress.

Def.'s Ex.1 (Settlement Agreement and Release. Para. 6).

Problems arose because, after this Agreement was executed, Crump was granted disability benefits from the Railroad Retirement Board, but apparently did not apprise Amtrak of that fact. Def.'s Ex. 2 Para. 3 (Decl. Of Christine Turnblacer). Thus, Amtrak performed under Clause 1 ($400

---

[3] This seven-month delay was designed so plaintiff could apply for disability benefits and know the status of his application before committing himself to a form of settlement.

for life).[4] Crump thus received 240 monthly payments of $600, for a grand total of $144,000.

In April 1988, after receiving payments of $600 per month for approximately six years, Crump sent a letter to Amtrak, asking whether Amtrak was entitled to any unpaid portion of the annuity in the event that he died prior to Amtrak's fulfillment of the Agreement.[5] In June of 1988, Amtrak responded in the affirmative. In this letter, moreover, Amtrak described its annuity contract with Manulife, discussed Paragraph 6 of the Settlement Agreement, and importantly, provided: *"Amtrak's obligation to make monthly payments to you continues for 20 years."* Pl.s Ex. 1 (Letter to Crump from Harold Henderson (June 2, 1988) (emphasis added). It appears that Crump neither responded to this letter nor indicated ant disagreement with Amtrak's contractual interpretation.

In June 2001, nearly thirteen years after Crump received this letter, and nearly twenty years after he began receiving payments of $600 per month, Crump challenged Amtrak's interpretation of Paragraph 6. Crump provided that under the Agreement, as properly construed, he should have been receiving benefits of $400 per month all along and that, under Paragraph 6, "Amtrak's obligation ends upon Mr. Crump's death." *See* Def.'s Ex.4 (Letter from Crump to Harold Henderson (June 16, 2001)). Six months later, Crump filed the instant action seeking declaratory judgment, as well as appropriate monetary relief.

---

[4] In May 1982, seven months after the Agreement was signed, Amtrak purchased an annuity contract No. 3.331.299 from Manulife Financial, which provided monthly payments of $600 per month beginning on May 1, 1982. The payments were for "20 years only, until 240 payments have been paid." Def.'s Ex. 3 (Policy No. 3.311.299-6).

[5] The court notes that, in this inquiry, plaintiff appears to recognize that payments going to be made for twenty years, rather than for life.

II. ANALYSIS

A. Summary Judgment Standard

Under Fed. R. Civ. P. 56, summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, admissions on file and affidavits show that there is no genuine issue of material fact in dispute and that the moving party is entitled to judgment as a matter of law. Material facts are those "that might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242.248 (1986). In considering a motion for summary judgment, the "evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id* at 255. But the non-moving party's opposition must consist of more than mere unsupported allegations or denials and must be supported by affidavits or other competent evidence setting forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *Celotex Corp. v. Catrett.* 477 U.S. 317 (1986). The non-moving party is "required to provide evidence that would permit a reasonable jury to find" in its favor. *Laningham v. United States Navy*, 813 F. 2d 1236. 1242 (D.C. Cir. 1987). If the evidence is "merely colorable" or "not significantly probative" summary judgment may be granted. *Anderson*, 477 U.S. at 249-50.

B. Contractual Agreement

Crump seems to claim that, under the terms of the Agreement, he is entitled to $600 a month for life. The court does not agree. The Agreement between the parties provided for alternative sources of performance depending upon whether or not a condition occurred. Specifically, the parties agreed that, if Crump received disability benefits from the Railroad Retirement Board, he would receive $400 per month for twenty years or life, whichever was longer. If Crump did not

receive disability benefits, he would receive $600 per month for twenty years.[6]

C. Plaintiff's Claim is Barred by the Statue of Limitations

Defendants argue that, assuming *arguendo* that there was a breach of contract, Crump's claim is barred by the statue of limitations.[7] The court agrees. Assuming Amtrak breached the Agreement, any breach occurred in May 1982 when Amtrak began performing under Clause 2, instead of Clause 1. Because Crump was aware of this breach no later than June 1988 when Crump received Amtrak's letter, stating its understanding of the Agreement's terms, and Crump did not file the instant action until January 2002, the action is time barred.

The limitation period for a breach of contract action is three years.[8] D.C. Code Sec. 12-31(7). In most cases, the statue of limitations begins to run at the time of the wrong, and in the case of payments, the statue of limitations generally begins to run "when the payment is made." *Northwest Bank Minn. Nat'l Ass'n v. Fed. Deposit Ins. Corp.*, 312 F. 3d 447, 452 (D.C. Cir. 2002) (citing *Wilcox v. Plummer's Ex'rs.* 29 U.S. (4 Pet.) 172,182 (1830)). *See id.*

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[6] The court notes that, because Amtrak mistakenly performed under Clause 2 of the Agreement instead of Clause 1, as to the time of Amtrak's last payment. Crump had received from Amtrak an additional $48,000. This is the equivalent of Crump receiving $400 per month for thirty years.

[7] Crump does not respond to or otherwise address defendants' statue of limitation affirmative defense.

[8] Although plaintiff nominally filed a suit for declaratory judgment, the underlying claim rests in breach of contract and therefore is subject to the District of Columbia's statue of limitations, under the principles enunciated in *Erie v. Tompkins*, 304 U.S. 64 (1938), and its progeny. *See Air Transport Ass'n of America v. Lenkin*, 71 F. Supp. 25.27 (D.D.C. 1989).

452.n. 4 ("if the injury is such that it should reasonably be discovered at the time it occurs, then the plaintiff should be charged with discovery of the injury, and the limitations period should commence at that time"). Under this rule, then, the statue of limitations began to run on May 1, 1982, at the time of defendants' first $600 payment.[9]

There is some question whether this rule applies in the same way when a contract involves a series of payments over time, as this one does. *See Keefe Co. v. Americable Int'l Inc.*, 169 F. 3d 34, 41 (D.C. Cir. 1999) ("Where an agreement provides for the payment of installments of money . . . the agreement is divisible in its terms, susceptible of successive breaches on failure to pay installments when due, and that each successive failure to pay . . . constitutes a fresh cause of action"); *Keefe Co. Americable Int'l Inc.*, 755 A. 2d 469, 476 (D.C. 2000) (finding that the statue of limitations did not bar an action to recover installment payments); *Bay Area Laundry & Dry Cleaning Pension Trust Fund v. Ferbar Corp. of California, Inc.*, 522 U.S. 192,0195 (1997) ("each missed payment creates a separate cause of action with its own . . . limitations period").

While the *Keefe* rule governs many disputes involving installment contracts, it does not govern the instant action. There are three important distinctions. First, in this case, unlike *Keefe*, Amtrak adopted a clear interpretation of the contract that governed throughout the contractual term. *See Northwest Bank*, 312 F. 3d at 454 (finding this factor important). Second, Crump was put on notice of Amtrak's

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[9] At that time Crump had obviously not suffered any financial injury, he had been overpaid, not underpaid. This fact is of no consequence, however. "[I]t has long been settled that statutes of limitations begin running when the wrong has been committed, even if at the time no more than nominal damages may be proved, and no more recovered," *Northwest Bank*, 312 F. 3d at 452 (internal citations and quotations omitted).

contractual interpretation and even spent years, after receiving notice, in a "no lose situation," receiving an extra $200 per month, able to wait-out Amtrak to find whether the $600 per month payments would continue beyond the twenty-year period. *Id* (same). Third, and most importantly, this case involves a question of contract interpretation-not mere nonperformance. *See In re Mortgage Escrow Deposit Litig*, 1994 WL 496707. * 1 (N.D. Ill. Sept. 9 1994) (citation omitted). These factors make this case more akin to *Air Transp. Ass'n v. Lenkin*, 711 F. Supp. 25 (D.D.C. 1989) *aff'd on other grounds*, 899 F. 2d 1265, 1266 (D.C. Cir. 1990).

In Lenkin, the plaintiff signed an agreement to lease office space from the defendants. Seventeen years later, the plaintiff filed suit, alleging that the defendants had been incorrectly interpreting one of the lease provisions, causing plaintiff to overpay rent for almost twenty years. *Lenkin*, 711 F. Supp. at 25. The plaintiff sought a declaratory judgment as to the provision's meaning and judgment in the amount of overpaid rent attributable to the allegedly improper interpretation. The district court, interpreting District of Columbia law, held that the plaintiff first received notice of the defendant's different interpretation of the contract. *Id* at 27. The court specifically stated: "Causes of action based on contract interpretation, as opposed to situations devoid of any interpretive questions such as nonpayment of installments, should be deemed to accrue on the date on which plaintiff becomes aware or should become aware of the parties differing interpretations." *Id* at 28. Recently in *Northwest Bank*, the D.C. Circuit cited to *Lenkin* extensively and approvingly, manifesting this Circuit's agreement with the decision.

The court thus finds that the limitations period commenced when Crump first received notice of Amtrak's interpretation of the Agreement. The monetary difference in payment between $400 and $600 should have been discovered at the

time of the first payment in 1982. However, at the very least, Crump received notice of Amtrak's interpretation in 1988 when Amtrak sent Crump a letter stating "Amtrak's obligation to make monthly payments to you continues for 20 years." Pl's Ex. 1. Because Crump received notice of Amtrak's contractual interpretation no later than June 1988 and Crump did not file the instant action until January 2002. Crump's action is barred by the statue of limitations. Defendants are therefore entitled to summary judgment.

D. Manulife Financial's Independent Basis for Summary Judgment

Manulife Financial further argues that, even if plaintiff's complaint had been timely filed, it would still be entitled to summary judgment. Again, the court agrees.

On July 1, 1982, Amtrak purchased an annuity contract from Manulife Financial. Under the terms of this annuity contract, Manulife Financial was to provide to Russell Crump monthly payments of $600 per month for twenty years. Crump, then, was the third party beneficiary of this annuity contract. Manulife performed under the terms of this contract. There is no allegation or suggestion to the contrary. Moreover, this was Manulife's only involvement in the controversy. Given these facts, the court is unable to conceive of a legal theory under which Manulife would be liable to Crump, and Crump has not been able to articulate one. The court therefore concludes that, even if plaintiff's complaint had been filed within the applicable limitations period, Manulife Financial would still be entitled to summary judgment.

III. CONCLUSION

This suit was filed after the expiration of the applicable limitations period. Thus, the action is time barred. In addition, plaintiff has failed to state any cognizable claim against Manulife Financial, and so, even if plaintiff's com-

plaint had been timely filed, defendant Manulife Financial would still be entitled to judgment as a matter of law.

Accordingly, defendants motion for summary judgment must be granted and plaintiff's cross-motion for partial summary judgment must be denied. An appropriate order accompanies this memorandum opinion.

_____

Henry H. Kennedy, Jr.
United States District Judge

Dated: _____

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Filed Jan. 31, 2002]

Case No. 1:02CV00175

RUSSELL E. CRUMP
3338 Croffut Place, SE
Washington, DC 20019-2437
Plaintiff,

vs.

NATIONAL RAILROAD PASSENGER CORPORATION
(Amtrak)
60 Massachusetts Avenue, NE
Washington, DC 20002

and

MANULIFE
The Manufactures Life Insurance Company
Head Office
200 Bloor Street East
Toronto, Canada M4W 1E5
Defendants,

COMPLAINT FOR
DECLARATORY JUDGMENT

1. This is an action for a Declaratory Judgment pursuant to 28 USCA Sections 2201, for anticipatory breach of an annuity contract consummated between defendants for the benefit of plaintiff.

(a) Defendant's notice of breach dated 1 September 1998 reads, "$600.00 payable on from May 1, 1982 payable . . . [For twenty years or life, whichever is longer] . . . final guaranteed payment will be paid on March 1, 2002 . . ."

(b) Plaintiff contends that the payment should continue for $600.00.

2. Plaintiff, a former employee of Amtrak, is citizen of the United States, and resides at 3338 Croffut Place, Southeast Washington, District of Columbia, 20019-2437. An "interested party" and beneficiary of a third party annuity contract # 33 11 299, made for plaintiff's benefit by defendants.

3. Defendant, National Railroad Passenger Corporation (Amtrak) is a Corporation created by the Rail Passenger service Act of 1970, as amended (49 U.S.C. 241), and was incorporated under the Laws of the District of Columbia, and headquartered at 60 Massachusetts Avenue Northwest, Washington, District of Columbia, 20002.

4. Defendant Manulife Financial is a foreign corporation headquartered at 200 Bloor Street East, Toronto, Canada M4W 1E5 and is authorized to do business as Insurance Company.

5. The court has jurisdiction under the following provisions of law:

A. Declaratory Judgment Act: June 14, 1934, CH. 512, 48 STAT. 955 (see 28 U.S. Code Sections 2201,02202), and Section 1332 (a).

B. DC Code Sections 13-422 and 13-423 (6).

6. This is an action for a Declaratory Judgment pursuant to 28 USCA Section 2201, for the purpose of determining a question of actual controversy between the parties as more fully appears below.

7. An actual controversy has arisen and now exist between the plaintiff and defendants regarding their respective rights and duties under a third party annuity contract # 33 11 299, purchased with proceeds awarded from a court settlement, which policy is in sole possession and custody of defendants Amtrak and Manulife.

8. On or about 28th day of September 1981, plaintiff Crump and defendant Amtrak entered into a "*Settlement Agreement and Release*" as the result of litigation filed in the United States District Court, District of Columbia. Civil Action # 79-1506, alleging violations of title VII of the Civil Rights Act: 42 U.S.C. Section 2000(e), et seq; and the Civil Rights Act of 1866, 42 U.S.C. 1981.

9. Plaintiff contends that the balance of the proceeds of the third party annuity contract should be paid to plaintiff as punitive damages required by the Civil Rights Act of 1866.

10. Plaintiff desires a judicial determination of the language set forth in paragraph 6 of the settlement which reads in part ". . . for twenty (20) years or life, whichever is longer . . ."

Wherefore, plaintiff requests:

1. A judgment declaring the rights, duties, and legal relation of plaintiff and defendants with regard to the annuity contract # 33 11 299;

2. Award attorney fees and costs; and

3. Such other and further relief as the court deems proper.

JURY TRIAL DEMANDED

Name: Russell E. Crump, Pro se
Signature: Russell E. Crump

I, Russell E. Crump, the plaintiff, above named, being duly sworn, say as follows:

I have read the above complaint and know its contents, and the contents are true of my knowledge.

/s/ Russell E. Crump
RUSSELL E. CRUMP

SUBSCRIBED AND SWORN TO BEFORE ME THIS DAY:

DATE: 1-31-2002

SIGNATURE:

MY COMMISSION EXPIRES: 3-1-2004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 1:02CV00175 (HHK)

RUSSELL E. CRUMP,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER CORPORATION (Amtrak), *et. al.*,

Defendants.

ANSWERS AND AFFIRMATIVE DEFENSES

Defendant, National Railroad Passenger Corporation ("Amtrak"), by and through undersigned counsel, hereby answers and responds to the allegations contained in Plaintiff's Complaint for Declaratory Relief:

1. The allegations contained in the first sentence Paragraph 1 are legal conclusions to which no response is required. Amtrak is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 1 and, accordingly, they are denied. Amtrak denies the allegations contained in the third sentence of Paragraph 1.

2. Amtrak admits that Plaintiff is a former emloyee. Amtrak admits that Plaintiff is the third party beneficiary of an annuity policy number 3,31,299-6. Amtrak is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 2 and accordingly, they are denied.

3. Amtrak admits that it is a federally chartered corporation headquartered in Washington D.C.

4. Amtrak is without knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint and, accordingly, they are denied.

5. The allegations contained in Paragraph 5 are legal conclusions to which no response is required. To the extent a response is required, the allegations are denied. Amtrak avers that the Declaratory Judgment Act, 26 U.S.C. Sections 2201, 2202 does not vest federal courts with jurisdiction. Amtrak avers that D.C .Code Sections 13-422 and 13-423 relate to the jurisdiction of the courts of the District of Columbia, not to the federal district courts.

6. The allegations contained in Paragraph 6 are legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

7. Amtrak denies the allegations contained in Paragraph 7.

8. Amtrak admits the allegations contained in Paragraph 8.

9. Amtrak denies the allegations contained in Paragraph 9.

10. The allegations contained in Paragraph 10 are a plea for declaratory relief. To the extent a response is required, the allegations are denied.

Except as specifically admitted above, Amtrak denies all other allegations contained in Plaintiff's Complaint.

Amtrak denies that Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

By pleading the separate and additional defenses stated below, Amtrak does not admit that it has the burden of production of proof with respect to any such defense.

FIRST AFFIRMATIVE DEFENSE

1. The Amended complaint and each purported cause of action set for the therein fails to state facts sufficient to constitute a cause of action against Amtrak upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Amtrak alleges that any duty or obligation, contractual or otherwise, which Plaintiff claims is owed by Amtrak, has been fully performed, satisfied or discharged.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiff's claim is barred by the applicable statue of limitations.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiff's claim is barred by laches.

FIFTH AFFIRMATIVE DEFENSE

5. Amtrak alleges that any contractual obligation was satisfied pursuant to accord and satisfaction.

SIXTH AFFIRMATIVE DEFENSE

6. No statutory or contractual provision entitles Plaintiff to the recovery of attorneys' fees.

WHEREFORE, Defendant National Railroad Passenger Corporation (Amtrak) prays that:

1. Plaintiff's Complaint be dismissed in its entirety and with prejudice;
2. Plaintiff take nothing by this action against Amtrak;
3. Judgment be entered in favor of Amtrak.
4. Defendant be awarded its costs of suit incurred herein; and
5. Defendant be awarded such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

Melissa B. Rodgers (D.C. Bar No. 436189)
National Railroad Passenger Corporation
60 Massachusetts Ave., N.E.
Washington, D.C. 20002

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1-02-00175 (HHK)

RUSSELL E. CRUMP,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

and

MANULIFE FINANCIAL
73 Tremont St., Suite 1300
Boston, MA 02108-3915,

Defendant.

ANSWER OF DEFENDANT MANULIFE FINANCIAL

Comes now the defendant Manulife Financial, and in answering, the Complaint for Declaratory Judgment hereby admits, denies and alleges as follows:

1. Defendant Manulife denies there has been any breach of the annuity contract between defendants. Moreover, plaintiff's allegations in paragraph 1 contain a misquote from the letter from Manulife Financial to Mr. Crump dated September 1, 1998. A copy of that letter is attached hereto as Exhibit A. Except as expressly admitted, defendant Manulife Financial denies generally and specifically the allegations of paragraph one.

2. Defendant Manulife Financial admits the allegations of paragraph 2 of the Complaint.

3. Defendant Manulife Financial admits the allegation of paragraph 3 of the Complaint.

WHEREFORE, having fully answered plaintiff's Complaint and having set forth its affirmative defenses, defendant prays that: (a) judgment be entered in favor of Manulife Financial and to dismiss plaintiff's claims with prejudice; (b) that the Court award Manulife Financial its costs and attorneys' fees, in part because plaintiff's claims are made in bad faith; and (c) such other and further relief as the Court deems proper.

Dated: March 29, 2002

Respectfully Submitted,

Wayne A. Schrader, Bar No. 361111
GIBSON, DUNN 7 CRUTCHER LLP
1050 Connecticut Avenue NW
Washington, D.C. 20036
(202) 955-8500
Facsimile: (202) 467-0539

Attorneys for defendant Manulife Financial

APPENDIX C

EXHIBIT 1
SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is executed on this 28th day of September 1981, by Russell E. Crump, hereinafter called "Plaintiff", and the National Railroad Passenger Corporation, hereinafter "Amtrak" or "Defendant", in full settlement of a dispute over whether plaintiff has been discriminated against because of his race as alleged in a complaint filed with the United States District Court for the District of Columbia, Civil Action No. 79-1506, and in charges filed with the District of Columbia Commission on Human Rights; and

WHEREAS, Plaintiff and his authorized representatives and the representatives of Amtrak have discussed the possibility of settlement of said dispute; and

WHEREAS, all parties desire to settle this dispute in strict conformance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), *et seq.*; and the Civil Rights Act of 1866, 42 U.S.C. § 1981; and

WHEREAS, Plaintiff and Amtrak desire to settle all disputes and differences between them with respect to the aforementioned dispute arising out of Plaintiff's employment with Amtrak, and any and all sections and elements of said dispute;

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the parties agree as follows

1. Plaintiff, his successors and assigns, hereby releases and discharges Amtrak from any and all liabilities and claims of any kind or nature that Plaintiff may have had or may now have arising out of his employment with Amtrak by virtue of any federal, state or District of Columbia statute or regulation and from all debts, demands, actions, suits, agreements, damages, and any and all claims, demands, and liabilities of

whatsoever name and nature, both in law and equity, against Amtrak, and hereby agrees to withdraw the now pending lawsuit in the United States District Court for the District of Columbia, Civil Action No. 79-1506, and the proceeding before the District of Columbia Commission on Human Rights Docket No. 1910-PE by executing stipulations that said lawsuit and proceeding shall be dismissed as to all parties, with prejudice. Plaintiff further agrees not to file any other claim or join in any claims as an individual or as a member of a class in any other state or federal court or agency relating to his employment with Amtrak or the employment of any other individual with the Corporation.

2. Within five (5) days after the execution of this Agreement and the aforementioned Stipulation of Dismissal, Plaintiff will be provided with a check in the amount of $60,000.00 for compensatory damages and attorney's fees after March 30, 1981.

3. Plaintiff agrees to resign from his employment with Amtrak within twenty-four (24) hours after this Agreement is executed. Following his last working day with Amtrak, Plaintiff agrees not to seek reemployment with Amtrak.

4. Amtrak agrees to continue Plaintiff's current salary, computed at the regular straight time rate, health insurance, and rail pass privileges for six (6) months after his resignation, or until he retires or obtains other employment, whichever occurs first. However, Plaintiff shall receive rail pass privileges for any longer period which a disability retiree of comparible railroad and Amtrak service would be entitled to.

5. Amtrak also will spire available for Plaintiff all outplacement services which are available to non-Agreement employees terminated from employment with Amtrak because of reductions in force, including resume preparation, job search, interview training, telephone and message service, and any other placement services or privileges afforded such

displaced employees. Further, Amtrak will not obstruct Plaintiff's efforts to seek other employment.

6. The parties understand and agree that because of present employment. If Plaintiff applies for and is granted a disability retirement by the Railroad Retirement Board, Amtrak shall cause to be paid to Plaintiff, in addition to the amount provided in Paragraph 2, the amount of $400 per month, for twenty (20) years or life, whichever is longer, commencing the month following retirement in compensation for claims of pain, suffering and emotional distress.

In the event that Plaintiff's application for disability retirement is denied, Amtrak shall cause to be paid to Plaintiff the amount of $600 a month for twenty (20) years commencing seven (7) months after execution of this Agreement in compensation for claims of pain, suffering and emotional distress.

7. Amtrak agrees to pay and Plaintiff agrees to accept the sums referenced above in full accord and satisfaction of all. disputes and differences between the parties. The monetary sums specified in Paragraphs 2 through 5 of this Agreement are provided as consideration for Plaintiff's general release of any and all claims he may have had or may now have against Amtrak arising out of Plaintiff's employment with Amtrak.

8. Amtrak and Plaintiff mutually agree that$_4$ except to the extent required to effect the provisions of this Agreement, the parties shall have no contact with each other, nor will they in any manner interfere with the business of the other.

9. Amtrak and Plaintiff mutually agree not to disclose the terms of this Agreement, including its monetary terms, to anyone, except as required by law.

10. This Agreement does not constitute an admission by Amtrak of any violation of Title VII of the Civil Rights Act

of 1964, as amended, the Civil Rights Act of 1866, 42 U.S.C. § 1961, or the District of Columbia Human Rights Act.

/s/ Russell E. Crump — September 28, 1981
Russell E. Crump
Plaintiff

/s/ Christopher Lutz — September 28, 1981
For Defendant National Railroad
Passenger Corporation

/s/ Harvey L. Taylor — September 28, 1981

EXHIBIT 2

APPLICATION FOR IMMEDIATE ANNUITY TO
THE MANUFACTURERS LIFE INSURANCE COMPANY

Head Office: Toronto, Ontario, Canada

PRINT & USE BLACK INK, ANY CHANGES SHOULD BE INITIALLED BY THE PERSON ANSWERING THE QUESTIONS.

If applying for an ANNUITY CERTAIN, do not answer questions 2, 3, 7 and 8.

ANNUITANT

1. First Name, Initial, Last Name: Russell E. Crump
2. ■ Male
   □ Female
3. Date of Birth: 9-19-44
4. Social Security Number:
5. Address. Include zip code:Rt #1, Box 246, Marinqouin, Louisiana 70757

JOINT ANNUITANT, if any

6. First Name, Initial, Last Name:
7. □ Male
   □ Female
8. Date of Birth:
9. Social Security Number:
10. Address. Same as in 5 □ or:
11. Owner If Other Than Annuitant: National Railroad Passenger Corp.
12. Address. Include zip code: 400 N. Capitol, Washington, DC 20001
13. Social Security or Taxpayer Identification Number:
14. Relationship to Annuitant: None

15. Succcessor Owner. Answer only if (a) One person is owner in question 11; or (b) in a joint and survivor plan, one of the annuitants is sole owner.

16. Relationship to Owner:

PERSON(S) TO RECEIVE ANNUITY PAYMENTS

17. Payee (subject to change) for annuity payments before death of annuitant (and surviving annuitant if any)—or, if plan is annuity certain, for annuity payments during term of annuity.

■ Annuitant, then surviving annuitant if any

□ Both annuitants jointly □ Owner

□ Other

18. Beneficiary (subject to change) for any payments payable after death of annuitant (and surviving annuitant if any). Does not apply if plan is for annuity with no refund on death. First name, initial, last name.

Primary: Owner

Secondary: None

19. Relationship to annuitant: None

20. Is the beneficiary in Question 18 to have the right to commute the annuity payments? ■ Yes □ No

21. Is this policy to replace or will it cause a change in any insurance or annuity policy on the annuitant's life or owned by the owner?

If yes state company and plan □ Yes ■ No

22. (a) □ Life Annuity (one life)

□ Joint And Survivor Annuity

(b) ■ Certain period 20 years

□ Installment refund

□ No refund. Complete form 72 if annuitant is owner and annuity is oin only one life.

□ Cash refund. Available only if annuity is on one life.

(c) □ Anuity Certain payable for only
20 years 0 months

(d) If death occurs before payments begin, the premium will be refunded without interest. If a joint and survivor annuity, the refund is to be paid on the first death; on the second death.

(e) ■ Other. Describe fully. Owner

23. Single Premium, $53,350

■ Paid: 4-14-82 □ Not paid □ C.O.D.

24. Amount Of Each Annuity Payment: $600

Payable every: ■ month □ 3 months
□ 6 months □ year
Starting: month: May day: 1 year: 1982
(At least a month after premium payment. Do not choose the 29th, 30th or 31st of a month.)

25. Annuity Checks to be payable to ■ annuitant

□ owner; and sent to his/her □ address □ bank account.

If to bank account, complete Form 923 (5) giving account details.

26. If the annuity is to be an I.R.A.; or a 403(b) tax-deferred annuity; or a Keogh Master Plan; or a single premium purchase under a qualified pension, or profit sharing, or Keogh plan; indicate whether the application supplement has been complete.

□ Yes ■ No (Explain)

27. Special Requests:

28. THE ANNUITANT(S) AND THE OWNER DECLARE that the answers and statements in this application are complete and true to the best of their knowledge and belief. IT IS AGREED that: (1) The policy will take effect on the date when the single premium is paid, even if the annuitant or the joint annuitant dies after that but before the policy is issued.

(2) Acceptance of the policy will constitute agreement to its terms and to any changes specified by the Company in the policy, except that any change of amount, classification, plan or benefits will be made only with the owner's written consent.

Signed (in the manner in which checks are to be drawn at: Washington DC this 14th day of April 1982

/s/ [Ineligible]
Witness (soliciting agent)

Owner, if other than annuitant, is to sign also. See instructions in manual.
/s/ National Railroad Passenger Corporation,
By: Harold R. Henderson, Deputy General Counsel

29. Ages foe which premium of $ ____ was quoted, as of the date of payment.

Annuitant:
Joint annuitant:

30. To the best of your knowledge, is this policy to replace or will it cause a change in any insurance or annuity policy on the annuitant's life or owned by the owner? If yes, explain and complete any required comparison papers.
■ No □ Yes

31. Have you issued a receipt □ Yes, $___ □ No

Policy Number: 3,311,299-6

Policy Date 15 Apr 1982

Issue Date 1 Jul 1982

Owner	National Railroad Passenger Corporation
Payee For Annuity Payments	Primary—Russell E. Crump Secondary—National Railroad Passenger Corp
Plan	Immediate Annuity Certain, Non-Participating
Annuity Payments	Monthly Payments—$600.00 Beginning On—1 May 1982 Payable—For 20 Years Only, Until 240 Payments have been paid
Single Premium	$53,350.00 Payable On Policy Date
Interest Rate For Commuting Annuity Payments After Death Of Primary Payee	15.00% Per Year Compounded Annually

EXHIBIT 3

[LOGO] June 2, 1988

Mr. Russell Crump
15031 Seven Pines
Baton Rouge, LA 70817

Dear Mr. Crump:

This is in response to your letter dated April 25, 1988, regarding the annuity policy of the Manufacturers Life Insurance Company which provides monthly payments to you. Specifically, you ask whether the designation on line 18 of the Annuity Application Form means that Amtrak is entitled to any unpaid portion of the annuity. In short, the answer is yes.

The Settlement Agreement executed on September 28, 1981, between you and Amtrak provided in paragraph 6, that in the event your application for disability retirement was denied, Amtrak would cause to be paid to you the amount of $600 a month for 20 years. Payment of that amount was provided through the subject annuity policy. However, there is nothing in the Settlement Agreement requiring such an annuity, and nothing regarding beneficiaries or surviving family members. The annuity is simply the vehicle through which Amtrak provides the required monthly payments to you. You were not a party to the annuity contract, and therefore did not sign it. In fact, I am at a loss to understand why you happen to be in possession of the Annuity Application Form.

Amtrak's obligation to make monthly payments to you continues for 20 years. In the absence of any contrary direction in the Settlement Agreement, the disposition of that asset upon your death within the 20-year period will be controlled by applicable law. You may be assured that Amtrak will comply with its contractual and legal obligations.

I trust that this adequately responds to the concerns you raised in your letter.

Sincerely,

/s/ Harold R. Henderson
Harold R. Henderson
Vice President-Law

HRH:fdt

EXHIBIT 4

[LOGO]
Manulife Financial
Annuity Service Center
P.O. Box 600
Buffalo, NY 14201-0606

September 1, 1998

Mr. Russell Crump
100 Leeds Place
Hattiesburg
MS 39402

Dear Mr. Crump:

Re: Annuity 3 311 299. Russell E Crump.

In response inquires made by you earlier today. This letter will serve as verification that you are the designated primary payee for the following annuity payments issued by the Manufacturers Financial Company:

- $600.00 payable on from May 1, 1982 payable for nineteen years and eleven months, the final guaranteed payment will be paid on March 1, 2002.

The annuity contract is owned by the National RR Passenger Co who has all rights of ownership in the contract. This annuity was purchased with proceeds awarded from a court settlement. The installments are paid as they fall due and the payment schedule cannot be altered in any way.

In the event of your death, any remaining guaranteed payments will be paid to the designated beneficiary.

Sincerely,

Peter Gopaul
Customer Service Specialist

EXHIBIT 5

1 800 333 2526

June 16, 2001

Mr. Harold Henderson
National Railroad Passenger Corporation
Amtrak law department

Dear Mr. Henderson

The settlement agreement executed on September 28, between Russell Crump and Amtrak provided in paragraph six (6) that the parties understand and agree that because o f serious illness the plaintiff is disabled from continuing his present employment. If plaintiff applies for and is granted a disability retirement by the Railroad Retirement Board, Amtrak shall cause to be paid to plaintiff, in addition to the amount paid in paragraph two (2), the amount of $400 per month, for twenty years (20) or life whichever is longer, commencing the month following retirement in compensation for claims of pain, suffering and emotional distress.

According to an attorney the settlement agreement and release had been breached because Russell Crump has been receiving disability retirement from the Railroad Retirement System since 1982.This you should have known since you (Amtrak) are the executor of the settlement.

The settlement agreement and release were signed by Mr. Crump on September 28, 1981, however, due to serious illness, Mr. Crump was not a party to the annuity that was purchased with proceeds awarded from the court settlement.

Since Mr. Crump had no control over the application, or the execution of the settlement agreement, we expect Amtrak to honor the agreement and continue to pay Mr. Crump according to the contract and legal obligation. Amtrak's obligation ends upon Mr. Crump's death.

Sincerely,

/s/ Russell Crump

EXHIBIT 6

Manulife Financial

Paul L. Gallagher
Assistant Vice President
& Senior Counsel

April 2, 2002

Russell E. Crump
c/o Iris M. Green, Esq.
Green and Foushee
1130 Seventeenth Street, NW.
Washington, D.C. 200364

Dear Mr. Crump, Ms. Green:

This letter serves to confirm that National Railroad Passenger Corp. purchased from Manulife an immediate annuity certain providing for 240 payments (20 years) at $600 per month. The annuity [Policy Number 3,311,299-6] was issued on July 1, 1982 and the primary payee for the monthly payments was Russell Crump who was and will received each and all of the monthly payment. As of July 1, 2002, the last payment will have been made and the annuity contract fulfilled.

The National Railroad Passenger Corp. will not and has not received any money or payments from Manulife in connection with the annuity. The annuity does not provide for any principal or any other accumulation that might be paid over to the owner. In simple terms, the National Railroad Passenger Corp. purchased a stream of 240 payments at $600 per month and all of those payments went to Russell Crump. The annuity does not provide for or obligate Manulife to make any other payments to any other entity or person. Accordingly, there is no surplus or capital accrual or anything

of that type to be paid to the National Railroad Passenger Corp. If you have any questions, please feel free to call.

Yours truly,

/s/ Paul L. Gallagher
Paul L. Gallagher
AVP, Senior Counsel

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 1:02CV00175(HHK)

RUSSELL E. CRUMP,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK), et. al.,

Defendants.

DECLARATION OF CHRISTINE TURNBLACER IN SUPPORT OF DEFENDANT NATIONAL RAILROAD PASSENGER CORPORATION'S CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT—INTERLOCUTORY IN CHARACTER (LIABILITY ONLY)

I. Christine Turnblacer, declare under penalty of perjure that the following is true and correct based on my knowledge and belief

1. I am over eighteen years of age. I am employed as a Senior Legal Assistant in the Law Department at the National Railroad Passenger Corporation. I make this declaration in support of Defendant National Railroad Passenger Corporation's Cross-Motion for Summary Judgment and Opposition to Plaintiffs Motion for Summary Judgment—Interlocutory In Character (Liability Only).

2. I have reviewed Plaintiff Russell Crump's personnel file and all law department files relevant to this case including any files maintained by then-V ice President of Law, Harold Henderson. The following facts are based on my review of those files.

3. I have found no records prior to 1984 indicating that Mr. Crump, his counsel or the Railroad Retirement Board notified Amtrak that Mr. Crump has been granted disability retirement benefits. Had Mr. Crump or his attorney notified Amtrak that he was receiving disability retirement benefits, such notification would have been found in Mr. Henderson's files. Likewise, Mr. Crump's personnel file does not contain any such notification nor does it contain any notification from the RRB in 1982 indicating that he had been granted disability benefits.

Executed on: July 1, 2002 /s/ Christine Turnblacer
Christine Turnblacer